

Notice of Allowability

Application No.

10/069,663

Examiner

Celia Chang

Applicant(s)

ABERG ET AL.

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/6/06 affidavit and examiner's amendment attached.
2. ☒ The allowed claim(s) is/are 1,6-10,13-15,18,19,21 and 22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

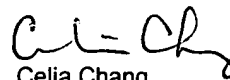
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Celia Chang
Primary Examiner
Art Unit 1625

DETAILED ACTION

1. Declaration under 37 CFR 1.132 and response filed by applicants dated Nov. 6, 2006 and Dec. 18, 2006 have been entered and considered carefully.

Claims 2-5, 11-12, 16-17, 20 have been canceled. Claims 1, 6-10, 13-15, 18, 19, 21, 22 are pending.

2. *Examiner's Amendment*

Authorization for this examiner's amendment was given in a telephone interview with Kevin S. Lemack on Mar. 14, 2007.

Claim 1. Line 2, after comprising insert --an effective amount of-- ;
Lines 1-2 after the formula, delete the term "and solvates".

Claim 7, p.9, line 8, delete the term "or solvate".

Claim 13, p.9, last line, delete the term "or solvate".

Claim 14, 3rd line, delete the term "or solvate".

Claims 15, 3rd line, delete the term "or solvate"

Claim 19, 6th line, deleted the term "or solvate"

Claim 22. Line 1, after comprising insert --an effective amount of-- ;
Lines 1-2 after the formula, delete the term "and solvates".

3. *Reason for Allowance*

The following is an examiner's statement of reasons for allowance:

Applicants have submitted a Declaration by Thomas Walle providing verification that at the time the invention was made no information of the chirality of atropisomeric norketotifen was available when optical specific S- or R-ketotifen was metabolized. The metabolic fate of conserving chirality is unpredictable. From analogous art, it is evidenced that inversion or racemization can be expected since the metabolism occurs primarily in the liver. The statements were confirmed independently by prior art such as Jamli et al. which evidenced bi-directional chiral inversion in analogous compounds; or

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Chen et al. which evidenced the lack of data regarding the pharmacokinetics of ketotifen due to lack of sensitive and specific analytical techniques. Therefore, the 103(a) rejection is dropped. The above examiner's amendment have obviated all the 112 issues of the claims. Claims 1, 6-10, 13-15, 18, 19, 21, 22 are allowed.

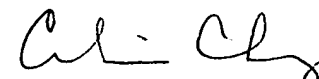
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie, Ph. D., can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang
Mar. 14, 2007


Celia Chang
Primary Examiner
Art Unit 1625